

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

PARAGON SYSTEMS, INC.

and

Cases 12-CA-105275
12-CA-105291

UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL 236

**GENERAL COUNSEL'S MOTION TO WITHDRAW EXCEPTIONS AND
MODIFY THE ADMINISTRATIVE LAW JUDGE'S FINDINGS AND CONCLUSIONS OF LAW**

On May 15, 2014, Administrative Law Judge Joel P. Biblowitz (the ALJ) issued his Decision and Order in Cases 12-CA-105275 and 12-CA-105291. In his Decision, the ALJ found that Paragon Systems, Inc. (Respondent) violated the Act in a number of respects. The violations found by the ALJ included, among others, a finding that Respondent violated Section 8(a)(5) of the Act by disciplining employees Kevin Daley, Donald Mendez, Joshua Wielder, Duane Douglas, and Anthony Durand-Gonzalez without first giving the United Government Security Officers of America, Local 236 (the Union) notice and an opportunity to bargain. (ALJD p. 8, Ins. 45-52; p. 9, ln. 1; p. 9, Ins. 19-51; 10, Ins. 50-53)¹.

While the ALJ found that Respondent violated the Act in a number of respects, he also recommended dismissal of certain allegations, including the allegations that Respondent violated Section 8(a)(5) of the Act by suspending employees Joe Favell and Kelvin Strong, and discharging employees Thomas Cifarelli and Jose Robles without first providing the Union notice and an opportunity to bargain. (ALJD p. 11, Ins. 8-10). As a result, on June 12, 2014, Counsel for the General Counsel filed exceptions to the ALJ's failure to find that Respondent violated Section 8(a)(5) of the Act by suspending employees Favell and Strong, and discharging employees Cifarelli and Robles without first giving the Union notice and an opportunity to bargain over said matters.

¹ ALJ Biblowitz's decision is referenced as ALJD, followed by the page and line numbers.

On August 26, 2016, the Board issued a decision in *Total Security Management*, 364 NLRB No. 106 (August 26, 2016), holding that an employer has an obligation to bargain prior to imposing discretionary discipline. However, the Board determined to apply its holding prospectively. In view of the Board's prospective holding in *Total Security Management*, Counsel for the General Counsel hereby requests that the exceptions filed on June 12, 2014, concerning the ALJ's failure to make findings of facts and conclusions of law regarding the suspension of employees Favell and Strong, and the discharges of Cifarelli and Robles, in violation of Section 8(a)(5) of the Act, be withdrawn.

Counsel for the General Counsel also requests that the ALJ's conclusions of law be modified to find that Respondent did not violate Section 8(a)(5) of the Act by disciplining employees Kevin Daley, Donald Mendez, Joshua Wielder, Duane Douglas, and Anthony Durand-Gonzalez. It is further requested that the Board modify the ALJ's proposed Order by removing the requirement that Respondent cease and desist from disciplining employees without first giving the Union notice and an opportunity to bargain. The affirmative provisions requiring that Respondent notify and bargain with the Union regarding the discipline of employees where discretion was exercised in the determination of discipline, and bargain with the Union over whether the employees had actually committed the offense involved, when discretion was employed and requiring that Respondent make the five employees whole should also be removed from the Order. (ALJD pgs. 11-12). Finally, Counsel for the General Counsel requests that the Board adopts the ALJ's Decision and Order in all other respects and requires that Respondent post an appropriate Notice to Employees.

DATED at Tampa, Florida this 21st day of September 2016.

Respectfully submitted,

s/Enrique González Quinones
Enrique González Quinones
Counsel for the General Counsel

Certificate of Service

I hereby certify that **Counsel for the General Counsel's Motion to Withdraw Exceptions and Modify the Administrative Law Judge's Findings and Conclusions of Law** in the matter of Paragon Systems, Inc., Cases 12-CA-105275 and 12-CA-105291, was electronically filed and served by electronic mail on the 21st day of September 2016, as set forth below:

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